YEONG PENG WAH v. BAHAL SINGH

[C.A. (Hill Ag. C.J., Good J.A., Ong J.)
August 17, 1961]

[Ipoh — Civil Appeal No. 66 of 1960]

Landlord and tenant — Control of Rent Ordinance, 1956 — "And" between paras. (m) and (n) of s.12(1) — "In any case, whether falling within any of the preceding paragraphs or not" — Interpretation.

The appellant, the landlord, made out his case for possession under paragraph (j) of section 12(1) of the Control of Rent Ordinance, 1956, but his claim was dismissed by the President of the Sessions Court on the ground that he had failed to satisfy the requirements of reasonableness and availability of suitable alternative accommodation under paragraph (n) of the section.

Held: paragraphs (a) to (n) of section 12(1) of the Control of Rent Ordinance, 1956, provide fourteen separate and distinct sets of circumstances where the landlord might recover possession of premises from his tenant.

Per **Ong J.:** There are thus two alternative constructions of paragraph (n). Either it is to be construed as enlarging the scope of section 12(1) or as restricting it. If the former, each of these paragraphs (a) to (n) has independent force and effect; if the latter, paragraph (n) makes all the rest redundant..... My interpretation of paragraph (n) gives effect to the whole of that paragraph and of every other in section 12(1); it raises no question of absurdity, inconsistency, repugnance, or implied repeal, and it fully accords with the intention of the legislature.

Case referred to:—

(1) *Attorney-General* v. *Sillom* (1863), 159 E.R. 217; 2 H. & C. 431, 515-6.

CIVIL APPEAL.

B. K. Das for the appellant.

S. P. Seenivasagam for the respondent.

Hill Ag. C.J.: I have had the advantage of reading the grounds of judgment of Ong J. with which I agree and to which I have nothing to add.

Good J.A.: I have had the advantage of reading the grounds of judgment of Ong J. with which I agree and have nothing to add.

Ong J.: This is an appeal against the judgment of the High Court at Ipoh affirming a judgment of the President of the Sessions Court, Taiping, whose interpretation of paragraph (n) of section 12(1) of the Control of Rent Ordinance, 1956, is that the requirements therein of reasonableness and availability of suitable alternative accommodation must in every case be satisfied where a landlord is claiming possession of controlled premises under the provisions of any of the preceding paragraphs (a) to (m). In the instant case the landlord had already made out a case for possession under paragraph (j) but his claim was dismissed on the ground that he had failed, in addition, to satisfy the requirements of paragraph (n). Against that decision the landlord is now appealing.

With the greatest respect to the learned Judge and the learned President I regret to find myself in disagreement with them, and I cannot help thinking that to a large extent their approach to the problem of interpretation had been clouded by arguments which laid an undue emphasis on canons of construction rather than logic.

The Control of Rent Ordinance, 1956, by section 12(1) prohibits recovery of premises except in certain specified cases, which are alphabetically numbered (a) to (n). The relevant portion of the section which now falls to be considered reads as follows:

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

xxx xxx xxx xxx xxx xxx; *and*

(n) in any case, whether falling within any of the preceding paragraphs or not, where the Court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

Here I should make certain observations: first, that section 12(1) has been framed as a general prohibition to which fourteen specific exceptions have been made; secondly, that these same fourteen exceptions have been carried over from section 13(1) of the former Control of Rent Ordinance of 1948, and that, in the process, amendments to a greater or lesser extent have been made in the former paragraphs (a), (d), (f), (h), (i), (j) and (k) at the same time as in paragraph (n); thirdly, that in the former Ordinance it was clear beyond a peradventure that paragraphs (a) to (n) did in fact provide for fourteen separate and distinct sets of circumstances where a landlord might recover possession of premises from his tenant. From these premises certain conclusions logically follow, as will appear later.

The words that have given rise to controversy are the word "and" between paragraphs (m) and (n), and those immediately following it, namely, "in any case, whether falling within any of the preceding paragraphs or not."

My own view is that no occasion arises for construing the word "and" as "or". The fourteen exceptions are distinctly and separately set out in exactly the same manner as one would say "Tom, Dick and Harry", so that "and" is properly a cumulative. As such, and in its context — being among the exceptions — this word extends rather than restricts the scope of the exceptions to section 12(1). Clearly then paragraph (n) provides an additional case, over and above the preceding thirteen, where a landlord may recover possession.

This view is indeed reinforced by the words following, namely, "in any case, whether falling within any of the preceding paragraphs or not." The whole phrase could have been compressed into the first three words therein. The remainder were added only *ex abundanti cautela*, and not, I would emphasise, as setting up a dichotomy of cases which fall within the preceding paragraphs and cases which do not. If there were a dichotomy, as the respondent contends, the result would be startling and completely absurd. There would then be, on the one hand, a residuary set of circumstances provided for by paragraph (n), not coming within the preceding thirteen exceptions, where the landlord need only satisfy the two essential requirements of reasonableness and availability of alternative accommodation for the purpose of obtaining an order or judgment in his favour. This, of course, is the *raison d'etre* for paragraph (n). There would also be, on the other hand, the cases which do fall within any one of the paragraphs (a) to (m). If the interpretation which the respondent contends for is correct, I see no reason whatever for the legislature retaining any of these thirteen paragraphs. Paragraph (n) need only stand alone. It is all-sufficient because no landlord will ever be so ill-advised as to attempt to found his application on any of the preceding paragraphs and thereby take on himself the additional onus of satisfying the Court that his case comes both within one of them and also within paragraph (n), when instead he can bring his case solely under (n) to obtain the desired order or judgment. For all practical purposes the respondent's interpretation of paragraph (n) makes of the preceding paragraphs a dead letter and the strongest intrinsic evidence that the legislature never so intended is that when paragraph (n) was recast in its present form, the legislature took pains to amend seven of the preceding paragraphs as well. I need hardly add that it is a cardinal rule of construction that in construing any particular clause in a statute one has to look to its connection with other clauses in the same statute, and the conclusions which, on comparison with other clauses, many reasonably and obviously be drawn. If comparison of one clause with others in the statute makes a certain proposition clear and undoubted, the Act must be construed so as to make it a consistent and harmonious whole. If after all it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail. (See *Attorney-General* v. *Sillom*).[1]

There are thus two alternative constructions of paragraph (n). Either it is to be construed as enlarging the scope of the exceptions to section 12(1) or as restricting it. If the former, each of these paragraphs (a) to (n) has independent force and effect; if the latter, paragraph (n) makes all the rest redundant. Good sense provides the solution.

When I said earlier in this judgment, that the opening words of paragraph (n) mean nothing more than the words "in any case" what I had in mind is the case of a landlord who relies, in the first place, on one of the first thirteen exceptions. In spite of failing to make out a case thereunder for repossession, he nevertheless may succeed, on the facts, in obtaining a judgment or order under paragraph (n). Therefore this paragraph is not meaningless even with regard to cases where the landlord's claim rests on one of the preceding exceptions. It is all a question of pleading. If a landlord is careful in his statement of claim to plead the necessary facts sufficient to support an alternative claim under paragraph (n), it matters not that he should be unsuccessful under another head of claim. In his pleadings he may, but is not bound to, specify which of the grounds he will rely upon, so long as he sets out the facts necessary to support the head or heads upon which his case depends.

My interpretation of paragraph (n) gives effect to the whole of that paragraph and of every other in section 12(1); it raises no question of absurdity, inconsistency, repugnance, or implied repeal, and it fully accords with the intention of the legislature.

I would therefore allow this appeal, set aside the Order of the Sessions Court, and order that vacant possession of the premises be delivered up by the respondent to the appellant on or before August 31, 1961 and that all rent in arrear and to accrue till date of delivery of vacant possession be paid by the respondent to the appellant. There will be no order as to costs as regards the proceedings in the Sessions Court but the appellant will have the costs of this appeal and of the appeal in the High Court, the deposit paid into Court by the appellant to be refunded to him.

Lastly, the provisions of section 19(1) require that "Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not." It appears from the evidence that one Yap Thian Hee has at all relevant times been lawfully in occupation of a portion of the premises as sub-tenant, namely, one room on the first floor and one-half of the ground floor. The order will not be enforceable against him.

Appeal allowed.

Solicitors: *Das & Co.; S. Seenivasagam & Son.*